IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 17015 of 2007(A)

AGAINST THE ORDER DATED 24-03-2007 IN EP.68/05 IN OS.34/1996 of SUB COURT,THODUPUZHA

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PETITIONER:

GOPALAKRISHNAN, S/O.AYYAPPAN,
AYKKARAKUNNEL HOUSE, VANNAPPURAM P.O.,
VANNAPPURAM VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.S.K.MURALEEDHARA KAIMAL
SRI.B.RAJESH

RESPONDENTS:

SIVARAMAN, S/O.NARAYANAN,
NADACKANAL HOUSE, VADAKKUMMURI, THODUPUZHA
EAST P.O., THODUPUZHA VILLAGE.

BY JOSE JOSEPH ARYAKUNNEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 17015 OF 2007

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Dated this the 5th day of June, 2007.

J U D G M E N T

This writ petition is preferred by the judgment debtor to issue a writ of certiorari to quash Ext.P4. Ext.P4 is the order passed by the learned Sub Judge, Thodupuzha wherein the Sub Judge has held that merely because the decree holder has filed a fresh proclamation schedule for 50 cents, E.P. cannot be held to be maintainable. It was further held that the decree holder is entitled to proclamation of the western 25 cents in Sy.No.1478/1-A of Vannappuram village at first. So the contention of the judgment debtor that an execution petition is not maintainable was turned down by the learned Sub Judge.

The learned counsel for the writ petitioner had invited my attention to Ext.P1 dated 6.3.04. As per that order the property was directed to be sold for Rs.8,85,000/-, that is, western 25 cents. The learned counsel had also submitted that there was a direction by this Court to sell only a portion of the property and therefore the execution petition filed for the sale of entire property has to be dismissed in toto. He would further submit

that it has become a final order. The said contention can be straight away rejected because what the Court had intended in the light of the Apex Court's decisions is to the effect that the entire property of the judgment debtor need not be sold in execution of a decree if the sale of a lesser extent is sufficient to discharge the decree debt. It is bearing that principle in mind the Court had ordered sale of 25 cents of property situated on the western side. Ordinarily no Court can hold that a sale of such and such extent will fetch such and such price even before a sale proclamation is effected and sale is conducted. So the contention of the learned counsel for the writ petitioner that there is a conclusive finding that 25 cents alone can be sold cannot be accepted at all. It has to be only understood as one direction thereby the Court has directed the executing Court to sell a portion of the property and in case of satisfaction of the decree debt by sale of that property to leave rest of the property in tact. Therefore, the contention of the learned counsel for the writ petitioner that only 25 cents can be proceeded cannot be upheld. Therefore, the writ petition is disposed of as follows:

(1) The executing Court is directed initially to proceed against 25 cents of property situated on the western side and the

said sale can be effected by public auction after complying with all necessary formalities.

In case the amount realised by public auction is not sufficient to discharge the decree debt, the Court may consider regarding sale of the balance property for the discharge of the decree debt.

M.N. KRISHNAN, JUDGE.

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